PATENT

C. REMARKS

Status of the Claims

Claims 1, 3-8, 10-14, and 16-20 were pending in the Application prior to this amendment. Claims 1, 3, 6, 8, 10, 14, 16, and 19 have been amended, and claims 5, 7, 12, 13, 18, and 20 have been cancelled. Claims 1, 3, 4, 6, 8, 10, 11, 14, 16, 17, and 19 remain pending in the Application, and claims 1, 8, and 14 are independent claims.

Drawings

The Office Action did not indicate whether the formal drawings filed by the Applicants are accepted by the Examiner. Applicants respectfully request that the Examiner indicate whether the drawings filed on March 15, 2001 are accepted by the Examiner in the next communication.

Claim Objections

Claims 3, 10, and 16 are objected to for depending from cancelled claims. Claim 3 has been amended to depend from claim 1, claim 10 has been amended to depend from claim 8, and claim 16 has been amended to depend from claim 14. Based on these amendments, Applicants respectfully request that the Examiner remove the objections to the claims.

Claim Rejections Under 35 U.S.C. § 112

Claims 3, 10, and 16 stand rejected under 35 U.S.C. § 112, second paragraph, for being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention, due to claims 3, 10, and 16 depending from cancelled claims. As noted above, claim 3 has been amended to depend from claim 1, claim 10 has been

PATENT

amended to depend from claim 8, and claim 16 has been amended to depend from claim 14. Applicants respectfully request that the rejections under 35 U.S.C. § 112 have been overcome, and respectfully request that the Examiner remove the rejections to claims 3, 10, and 16.

Claim Rejections - Alleged Obviousness Under 35 U.S.C. § 103

Claims 1, 3-8, 10-14, and 16-20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Saari et al., U.S. Patent No. 6,338,046 (hereinafter Saari), in view of Hernandez et al., U.S. Patent No. 6,208,977 (hereinafter Hernandez). Applicants respectfully traverse the rejections under 35 U.S.C. § 103.

Independent claim 1 has been amended to include elements similar to those previously found in dependent claims 5 and 7, and claims 5 and 7 have been cancelled. Similarly, independent claims 8 and 14 have been amended to include limitations similar to those previously found in dependent claims 12 and 13, and 18 and 20, respectively. Claims 12, 13, 18, and 20 have been cancelled. Note that independent claims 1, 8, and 14 have been amended to claim that a high priority header is written to each of a plurality of packets originating from a computer system. Support for this amendment is found, for example, in Applicants' specification on page 15, lines 11-19.

Using amended, independent claim 1 as an exemplary claim, Applicants teach and claim the following:

- determining, by a network pricing computer, an amount of traffic on a computer network, wherein the determining includes requesting traffic data from one or more network

PATENT

devices and receiving the requested traffic data in
response to the requests

- calculating, by the network pricing computer, a network
  usage price in response to the determination

- applying the network usage price to a network session,
  wherein the applying includes:

  - recording a session start time and the network
    usage price for the network session

  - identifying a session stop time for the network
    session

  - writing a high priority header to each of a
    plurality of packets originating from a computer
    system corresponding to the network session
    between the session start time and the session
    stop time

  - determining an elapsed session time

  - calculating a session billing amount
    corresponding to the elapsed session time and the
    network usage price

Applicants respectfully submit that neither Saari nor
Hernandez disclose key elements of Applicants' independent
claims. In particular, the cited prior art does not teach or
suggest "writing a high priority header to each of a plurality
of packets originating from a computer system corresponding to
the network session between the session start time and the
session stop time," as taught and claimed by Applicants in
independent claims 1, 8, and 14.

The Examiner cites Saari's Figure 2 as teaching this aspect
of Applicants' invention (see Office Action, page 5, lines 9-
13). Figure 2 depicts a billing cell (reference numeral 31)

Docket No. AUS920010384US1   Page 10 of 13   Atty Ref. No. 1021
                            Grande, et. al. - 09/891,337

with a header (reference numeral 36). Although Saari does disclose that its billing cells include a header, this is in no way analogous to the high priority headers as taught and claimed by Applicants. The header disclosed by Saari is included as part of a billing cell, not added *to each packet of data* originating from a user computer system, as taught and claimed by Applicants. As disclosed by Saari, "[t]he billing cell 31 includes a header 36 which uniquely identifies this cell as providing billing information" (col. 4, lines 66-67). The header information provides "a means of distinguishing between billing cells and non-billing cells" (col. 5, lines 4-5). This is in direct contrast to the *high priority headers* as taught and claimed by Applicants, which are written to *each packet that originates* from the user computer system, and *are not separate* from the actual data or information, as disclosed in Saari. In other words, Applicants do not distinguish between "billing cells" and "non-billing cells," but rather, Applicants teach and claim "writing a high priority header to each of a plurality of packets originating from a computer system corresponding to the network session between the session start time and the session stop time."

According to Saari, when a connection is established with a node, "a billing message or cell is transmitted to the node over the connection" (col. 2, lines 6-8). The billing cell includes billing information which is used by the node to produce billing information (col. 2, lines 8-10). However, note that the billing cell is separate from the information cells which are transmitted over the connection. Note that Saari specifically states that "[i]nformation cells are transmitted over the same connection *subsequent to the transmission of the billing cell*" (col. 2, lines 10-12, emphasis added). In other words, a

billing cell (and similarly, a terminate billing cell, as discussed in col. 5, lines 27-32), is a completely different entity from the information, or data, that is transmitted via a node.

In contrast, Applicants teach and claim "writing a high priority header to each of a plurality of packets originating from a computer system corresponding to the network session between the session start time and the session stop time." As clearly claimed by Applicants in independent claims 1, 8, and 14, the "high priority header" is *written to each packet* that originate from the user computer system. The "high priority" headers *are not separate* from the packets that originate from the user computer system. In direct contrast to Applicants' claimed invention, Saari discloses that "the source 27 transmits a billing cell 31 *prior* to transmitting cells of information over the connection 33" (col. 4, lines 63-65, emphasis added). By disclosing a billing cell that is separate from a data cell, and by using a header to distinguish between a billing cell and a data cell, Saari actually teaches away from writing a high priority header *to each packet* that originates from the computer system, as taught and claimed by Applicants. Note that Saari only includes headers on billing cells (and terminate billing cells) and uses these headers to distinguish between billing cells and "cells of a conventional type" (col. 4, line 66 through col. 5, line 1). Saari does not include a header, and certainly not a "high priority header" on each packet originating from a computer system between a session start and stop time, as taught and claimed by Applicants.

The Hernandez reference does not overcome the deficiencies of Saari. None of the cited art, either alone or in combination, teaches or suggests Applicants' independent claims,

Docket No. AUS920010384US1   Page 12 of 13   Atty Ref. No. 1021
Grande, et. al. - 09/891,337

in particular the element of "writing a high priority header to each of a plurality of packets originating from a computer system corresponding to the network session between the session start time and the session stop time." For the reasons set forth above, Applicants respectfully submit that independent claims 1, 8, and 14, and the claims which depend from them, are patentable over Saari in view of Hernandez, and respectfully request that they be allowed.

Conclusion

As a result of the foregoing, it is asserted by Applicants that the remaining claims in the Application are in condition for allowance, and Applicants respectfully request an early allowance of such claims.

Applicants respectfully request that the Examiner contact the Applicants' attorney listed below if the Examiner believes that such a discussion would be helpful in resolving any remaining questions or issues related to this Application.

Respectfully submitted,

By _Leslie A. Van Leeuwen_

Leslie A. Van Leeuwen, Reg. No. 42,196
Van Leeuwen & Van Leeuwen
Attorneys for Applicant
Telephone: (512) 301-6738
Facsimile: (512) 301-6742